

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PAUL R.,

Plaintiff,

V.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C19-1243 RSM

**ORDER AFFIRMING THE
COMMISSIONER'S FINAL
DECISION AND DISMISSING THE
CASE WITH PREJUDICE**

Plaintiff seeks review of the denial of his application for Disability Insurance Benefits.

Plaintiff contends the ALJ erred by finding transferable work skills and by failing to account for his deficits in concentration, persistence, and pace. Dkt. 12. As discussed below, the Court **AFFIRMS** the Commissioner's final decision and **DISMISSES** the case with prejudice.

BACKGROUND

Plaintiff is 66 years old, has a high school education, and has worked as a code enforcement officer. Dkt. 7, Admin. Record (AR) 32. Plaintiff alleges disability as of May 30, 2014. AR 153. In October 2018, the ALJ issued a decision finding Plaintiff not disabled. AR 21-34. Utilizing the five-step disability evaluation process,¹ the ALJ found:

¹ 20 C.F.R. § 404.1520.

ORDER AFFIRMING THE
COMMISSIONER'S FINAL DECISION AND
DISMISSING THE CASE WITH PREJUDICE

1 **Step one:** Plaintiff has not engaged in substantial gainful activity since the alleged onset
2 date.

3 **Step two:** Plaintiff has the following severe impairments: obstructive sleep apnea,
4 obesity, status post bilateral shoulder surgery, status post left knee surgery, peripheral
5 neuropathy, and headaches.

6 **Step three:** These impairments do not meet or equal the requirements of a listed
7 impairment.²

8 **Residual Functional Capacity (RFC):** Plaintiff can perform light work, further limited
9 to occasional pushing, pulling, or reaching overhead with both arms. He can never climb
10 ladders, ropes, or scaffolds and can occasionally kneel, crouch, or climb ramps and stairs.
11 He can never work at unprotected heights or in proximity to hazards. He cannot be
12 exposed to extreme cold, heat, vibration, or loud noise. He can perform unskilled and
13 semi-skilled work. He can maintain concentration, focus, persistence, and adequate pace
14 in two-hour increments.

15 **Step four:** Plaintiff cannot perform past relevant work.

16 **Step five:** Because Plaintiff has acquired transferable work skills that enable him to
17 perform jobs existing in significant numbers in the national economy, Plaintiff is not
18 disabled.

19 AR 23-34.

20 DISCUSSION

21 This Court may set aside the Commissioner's denial of Social Security benefits only if
22 the ALJ's decision is based on legal error or not supported by substantial evidence in the record
23 as a whole. *Trevizo v. Berryhill*, 871 F.3d 664, 674 (9th Cir. 2017).

24 A. **Concentration, Persistence, and Pace Limitations**

25 Plaintiff contends the ALJ found he had "moderate" deficits in concentration, persistence,
26 and pace due to physical impairments, but erred by failing to include corresponding limitations
27 in the RFC. Dkt. 12 at 4.

28

² 20 C.F.R. Part 404, Subpart P, Appendix 1.
29 ORDER AFFIRMING THE
30 COMMISSIONER'S FINAL DECISION AND
31 DISMISSING THE CASE WITH PREJUDICE

1 At step two, the ALJ found Plaintiff had “moderate deficits” in “concentrating, persisting,
2 or maintaining pace … arising from his severe physical conditions, such as obstructive sleep
3 apnea and pain.” AR 25. Plaintiff contends the step two findings must be used in “shaping the
4 RFC.” Dkt. 12 at 3. In formulating the RFC used at step five, the ALJ found Plaintiff “can
5 persist, focus, concentrate and maintain an adequate pace in 2 hour increments.” AR 27. The
6 ALJ accounted for moderate deficits by imposing a two-hour limitation on maintaining
7 concentration, persistence, and pace at one time. Plaintiff offers no argument why this RFC
8 limitation does not adequately account for moderate deficits.

9 Instead, Plaintiff argues that a different limitation in the RFC, to “unskilled and semi-
10 skilled work,” does not adequately address his moderate deficits. AR 27. Regardless, the ALJ
11 accounted for Plaintiff’s moderate deficits by expressly limiting him to two-hour increments. As
12 the Commissioner points out, the two-hour limitation is supported by substantial evidence, such
13 as Plaintiff’s report that he can read a book for up to two hours. AR 566.

14 The Court concludes the ALJ did not err in accounting for Plaintiff’s moderate deficits in
15 concentration, persistence, and pace.

16 **B. Transferable Work Skills**

17 Because Plaintiff is “closely approaching retirement age (age 60 or older)” and limited to
18 light work, he can only be considered to have transferable skills to work that is “so similar to
19 [his] previous work that [he] would need to make very little, if any, vocational adjustment in
20 terms of tools, work processes, work settings, or the industry.” 20 C.F.R. § 404.1563(e); *id.* at
21 § 404.1568(d)(4).

22 The ALJ found the vocational expert’s testimony established that Plaintiff’s past work as
23 a code enforcement officer gave him “acquired work skills … transferable to” occupations such
ORDER AFFIRMING THE
COMMISSIONER’S FINAL DECISION AND
DISMISSING THE CASE WITH PREJUDICE

1 as security guard, warehouse watch guard, and merchant patroller.³ AR 34, 33. The ALJ found
2 the vocational expert's testimony established that Plaintiff would need to make "very little, if
3 any, vocational adjustment in terms of tools, work processes, work settings, or the industry." AR
4 34.

5 Substantial evidence supports the ALJ's findings. The vocational expert testified
6 Plaintiff's skills "certainly would be transferable" to the three example occupations because they
7 involve "dealing with enforcement and regulations and his ability to observe and report." AR
8 141. The specific transferable skills were "ability to observe, write reports, report back to
9 people, ... to tell people if they're doing something they shouldn't be doing. ... They call for
10 help if they need to call for help. And they know ... what people can and cannot do, if they're
11 going somewhere they shouldn't go, for instance." AR 142-43. This was sufficient to support
12 the ALJ's finding of transferable skills.

13 The vocational expert testified there would not be "more than minimal vocational
14 adjustment required" for the three example jobs. AR 143-44. Plaintiff argues the vocational
15 expert never stated specifically that "very little, if any, vocational adjustment" was needed. Dkt.
16 12 at 11. However, evidence establishing "very little vocational adjustment" or otherwise
17 acknowledg[ing] that a more stringent test is being applied which takes into consideration
18 [claimant's] age" is all that is required. *Renner v. Heckler*, 786 F.2d 1421, 1424 (9th Cir. 1986).
19 The vocational expert's testimony of "minimal" vocational adjustment meets the stringent
20 standard. This constituted substantial evidence supporting the ALJ's finding that little if any
21 vocational adjustment would be needed.

22 _____
23 ³ The vocational expert described all three example occupations—security guard, warehouse watch guard,
and merchant patroller—as "all security guard jobs in different kinds of settings." AR 143.
ORDER AFFIRMING THE
COMMISSIONER'S FINAL DECISION AND
DISMISSING THE CASE WITH PREJUDICE

1 Plaintiff argues the ALJ erred by failing to resolve a conflict between the vocational
2 expert's testimony and the *Dictionary of Occupational Titles* (DOT). Dkt. 12 at 10-11. Plaintiff
3 contends, because the DOT codes for Materials, Productions, Subject Matter, and Services
4 (MPSMS), Work Fields, and Industry for his past work differ from those for the jobs the ALJ
5 found he could perform, that the DOT contradicts the vocational expert's testimony. Plaintiff
6 offers no authority for the proposition that matching codes are the only way to establish that
7 skills transfer between occupations, or that mismatch between codes contradicts vocational
8 expert testimony of transferability. In fact, the internal Social Security Administration manual
9 Plaintiff cites recommends searching for matches in those codes *or other codes*, indicating that
10 those codes are not the only way to establish transferability. *See* Dkt. 12 at 9 (citing Program
11 Operating Manual System DI 25015.017(I)). Plaintiff has not shown a conflict between the DOT
12 and the vocational expert's testimony, and thus the ALJ did not err by failing to resolve a
13 conflict.

14 The Court concludes the ALJ did not err in finding transferable work skills.

15 **CONCLUSION**

16 For the foregoing reasons, the Commissioner's final decision is **AFFIRMED**, and this
17 case is **DISMISSED** with prejudice.

18 DATED this 18 day of February 2020.

19
20 
21 RICARDO S. MARTINEZ
22 CHIEF UNITED STATES DISTRICT JUDGE
23

ORDER AFFIRMING THE
COMMISSIONER'S FINAL DECISION AND
DISMISSING THE CASE WITH PREJUDICE